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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: MICHAEL W. WOOD ET AL.

Serial No.: 09/923,675

Art Unit: 3713

Filed: August 6, 2001

Examiner: Marks, C.

For: VIDEO POKER GAME WITH BONUS AWARD FOR  
MATCHING DESIGNATED HANDS

MAIL STOP APPEAL BRIEF -- PATENTS  
Commissioner for Patents  
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APPELLANTS' APPEAL BRIEF

1. REAL PARTY IN INTEREST

This application has not yet been assigned, but it is under contract to be assigned to Action Gaming, Inc., a Nevada corporation.

I hereby certify that this correspondence is being deposited with the United States Postal Service as on this date May 19, 2004 in an envelope as "Express Mail Post Office to Addressee" Mailing Label No. ER155256290US addressed to: MAIL STOP APPEAL BRIEF -- PATENTS, COMMISSIONER FOR PATENTS, PO BOX 1450, ALEXANDRIA, VA 22313-1450.

\_\_\_\_ Michael W. Wood et al.

Applicant(s)

\_\_\_\_ Signature

\_\_\_\_ May 19, 2004

Date of Signature

2. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

3. STATUS OF CLAIMS

Claims 1-7 are pending in this application. Claims 1-7 stand twice rejected.

4. STATUS OF AMENDMENTS

There are no Amendments after the second rejection of Claims 1-7.

5. SUMMARY OF THE INVENTION

Appellants' invention relates to a video draw poker game that includes a bonus feature determined by the cards that are dealt on the initial five card hands of the video poker game. The regular video draw game is played in the conventional manner.

This bonus feature game plays along with the video draw poker game. The bonus game involves establishing a predetermined arrangement of cards that the player must match over the course of

consecutive rounds of the video draw poker game. Depending on how many consecutive rounds of the video draw poker game must be played in order for the player to match the predetermined arrangement of cards, the player may win a bonus award.

As each round of the video draw poker game is played, the initial five cards that are dealt are compared to the predetermined arrangement of cards that the player must match. The amount of a bonus award that is paid to the player is based on the number of consecutive rounds that it takes for the player to match all of the predetermined arrangement of cards.

Claim 1 is the only independent claim.

Claim 1. A method of playing a video poker game having a bonus award feature comprising:

- a) establishing a predetermined arrangement of cards as a winning bonus award [Specification Page 10: line 9 through page 11: line 1];
- b) dealing a first initial five card hand to a player [11:2-4];
- c) determining whether any of the first initial five cards match any of the predetermined arrangement of cards and

if any matches occur, noting the matched cards [11:4-7] ;

- d) allowing the player to play out the first initial five card hand according to the conventional manner of play of video poker [12:1-3] ;
- e) continuing to deal subsequent initial five card hands [12:4-6] and determining whether any of the cards of each subsequent hand match any of the predetermined arrangement of cards and noting the matched cards [12:8-13] ;
- f) continuing to allow the player to play out each of the subsequent initial five card hands according to the conventional manner of play of video poker [12:4-6 and 12:22] ; and
- g) when all the predetermined arrangement of cards have been matched [13:1-3] , determining whether the player has achieved a bonus award [13:12-15] .

## 6. ISSUES

Whether Claims 1-7 are unpatentable under 35 U.S.C. §103(a) over Holmes et al. (5957774) in view of Schneider (6089976) and

further in view of Falciglia (5935002).

7. GROUPING OF CLAIMS

First Group of Claims

Claims 1-7 stand together as the first and only group of claims.

8. ARGUMENTS

Appellant's Summary of the Prior Art

Holmes '774 discloses a video draw poker game that also has a predetermined arrangement of cards that the player must match based on the initial five cards that are dealt during a video draw poker game. However in the Holmes disclosure, as the Examiner recognizes, there is no noting of the matched cards as they occur and there is no deal of subsequent hands and there is no carryover of any cards that are matched to any subsequent rounds of play of the video draw poker game.

Schneider '976 discloses a separate bonus round that is played as part of a video poker. The player becomes eligible for this bonus round when the player achieves a qualifying outcome during

the player of the regular video poker game. Note that Schneider discloses video draw poker as a representative game, so that the determination of whether the player has a qualifying outcome is not made until after the draw step occurs. For example, if the player achieves a winning poker hand (presumably such as a straight, flush or the like), the player then earns the reward of going to the bonus round.

As disclosed in Schneider, the bonus round is a matching game in which a plurality of symbols are displayed on the video screen, such as fifty stars. The player then plays the bonus round by selecting a series of stars. Each time the player selects a star, an amount is revealed. The player continues to select stars until two amounts of same value are revealed (i.e. the player achieves a match). The matching value is what the player wins. See Figure 3, in which the player has revealed two amounts of twelve and the player then receives a bonus award of twelve.

Falciglia discloses a bingo game. This bingo game is played on an electronic device by a single player -- unlike conventional live bingo which is played in a large room by a plurality of players. In conventional live bingo, the bingo numbers are drawn

until somebody wins by achieving a "bingo" on her bingo card. The object of the Falciglia patent is to adapt bingo to an electronic game played by a single player.

As described in the Falciglia disclosure, a bingo card in a five-by-five matrix is displayed to the player. Then five slot reels are spun a maximum of ten times. Each slot reel is aligned with a column of the five-by-five bingo card matrix. Each slot reel only has outcomes that correspond to possible outcomes on the associated column. In the preferred embodiment of the Falciglia disclosure, the winning bingo combinations are a vertical column, a horizontal row, the two five symbol diagonals and a coverall. The player must make a wager before each of the ten maximum spins. Prior to the first spin, twelve of the twenty-five locations on the bingo card are pre-covered for the player to enhance the player's chances of winning.

#### Appellant's Summary of the Examiner's Position

The Examiner proposes to modify the Holmes disclosure to allow the player more than one attempt to make a match. This modification is said by the Examiner to be suggested by Schneider.

The Examiner also notes that there is no suggestion in this reliance on Schneider as applied to Holmes as to how the bonus award is calculated. The Examiner relies on Falciglia for the suggestion that the indicia chosen can be matched to preset indicia and for the suggestion that the award can be based on the number of tries that it takes for all of the preset indicia to be matched.

Arguments re: First Group of Claims

Why Claims 1-7 are not unpatentable over Holmes et al in view of Schneider and Falciglia

The proposed modification of Holmes in view of the disclosure of Schneider as posited by the Examiner would not meet the limitations of the method of Claim 1.

Claim 1 requires the video poker game to continue for consecutive rounds until all of the predetermined arrangement of cards has been achieved. The continued matching of Schneider occurs after only one winning hand of video poker. Once the player has qualified for the bonus round of Schneider, the

attempted matching continues until a bonus award is achieved by the player by having two symbols match.

Claim 1 does not require a qualifying event to get to the bonus round. Claim 1 simply establishes a bonus feature that is in play on every round of video poker. The accumulation of correct card matches continues through every subsequent round of video poker until a complete match has been achieved. Once a complete match has been achieved, the player may or may not win an award depending on how many rounds of video poker it took to achieve the complete match.

In Schneider, once the player qualifies for a bonus round, the matching action of the bonus round continues until the player wins an award. In Schneider, the player always wins an award once the player gets to the bonus round.

There is nothing in Falciglia that overcomes this deficiency of Holmes as modified by Schneider.

The Falciglia disclosure is not a bonus feature on a conventional bingo game; the Falciglia disclosure is the bingo game itself.

Appellants' invention requires that the bonus feature

determination continue until the player matches all of the predetermined arrangement of cards. In the Falciglia disclosure, the game does not continue until the player matches all of the locations on the bingo card. The game ends after a preset number of spins, such as ten spins.

Appellants submit that bingo and video poker are non-analogous art. A person having ordinary skill in the art of video draw poker would not be inclined to look to the art of bingo for teachings or suggestions that would be relevant to video draw poker.

Furthermore, the combination of the Falciglia disclosure with the Holmes and Schneider disclosure would not result in Holmes being modified in the manner suggested by the Examiner. Because the Falciglia disclosure teaches or suggests a preset number of spins, such as ten spins, there is no teaching or suggestion in Falciglia that the number of rounds of play of video poker should continue indefinitely until the player has matched all of the predetermined arrangement of cards as set out in Claim 1.

In fact Falciglia teaches away from Schneider rendering the proposed combination improper. As noted above, Falciglia limits

the matching attempts to a preset number of spins, say ten spins. Schneider on the other hand teaches having the player continue selecting symbols until a match occurs. There is a conflict between what Falciglia teaches and what Schneider teaches, so the combination of these two is incompatible.

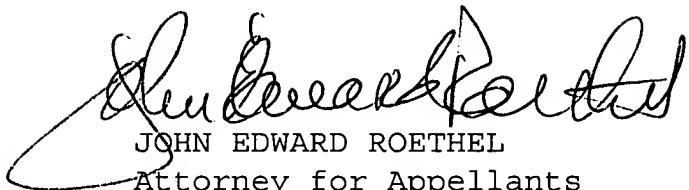
Claims 2-7 depend directly or indirectly from Claim 1 and are submitted to be allowable for the same reasons that Claim 1 is allowable.

#### 9. CONCLUSION

Appellants submit that Claims 1-7 have been improperly rejected by the Examiner under 35 U.S.C. 103. Appellants respectfully request that the Board of Appeals reverse the Examiner's rejections of Claims 1-7 and remand this application to the Examiner for further action consisting of a Notice of Allowance.

An Appendix is attached to this Brief setting out in full the claims on appeal.

Respectfully submitted,



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## APPENDIX

Claim 1. A method of playing a video poker game having a bonus award feature comprising:

- h) establishing a predetermined arrangement of cards as a winning bonus award;
- i) dealing a first initial five card hand to a player;
- j) determining whether any of the first initial five cards match any of the predetermined arrangement of cards and if any matches occur, noting the matched cards;
- k) allowing the player to play out the first initial five card hand according to the conventional manner of play of video poker;
- l) continuing to deal subsequent initial five card hands and determining whether any of the cards of each subsequent hand match any of the predetermined arrangement of cards and noting the matched cards;
- m) continuing to allow the player to play out each of the subsequent initial five card hands according to the conventional manner of play of video poker; and
- n) when all the predetermined arrangement of cards have

been matched, determining whether the player has achieved a bonus award.

Claim 2. The method of Claim 1 in which the player makes a wager to be eligible to participate in the video poker game.

Claim 3. The method of Claim 2 in which the player receives a bonus award based on the number of initial five card hands that are dealt in order for all of the predetermined arrangement of cards to be matched.

Claim 4. The method of Claim 3 in which the bonus award is based on a pay table.

Claim 5. The method of Claim 4 in which the pay table comprises:

NUMBER OF HANDS DEALT	BONUS AWARD
1-5	500
6-12	25
13-75	0
76-99	300
100-129	1000
130 OR MORE	4000

Claim 6. The method of Claim 1 in which the predetermined arrangement of cards is five cards.

Claim 7. The method of Claim 6 in which the predetermined arrangement of cards is a Royal Flush.